

WHAT EVERY IOWA TRIAL JUDGE
SHOULD KNOW ABOUT
H.F. 619:
DNA PROFILING,
SENTENCING SEX OFFENDERS,
AND THE SEX OFFENDER REGISTRY

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INTRODUCTION	2
PART I—DNA PROFILING.....	3
A. Privacy Issues.....	3
B. Who Has to Submit a DNA Sample?	4
C. Post-conviction Motions for DNA Profiling – Iowa Code § 81.10	5
PART II—REGISTERED SEX OFFENDERS	7
A. Registration Rules.....	7
B. Monitoring Rules.....	12
C. Miscellaneous.....	14
PART III—ENHANCED SEX-OFFENDER PENALTIES	16
A. Repeat Offenders.....	16
B. “Special Sentences”.....	18

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Introduction

On June 14, 2005, Governor Vilsack signed H.F. 619 (hereinafter “the Act”), which amended several sections of the Iowa Code relating to DNA testing of convicts and the sentencing and monitoring of sex offenders. The DNA-profiling provisions of H.F. 619 took effect immediately; the other provisions became effective on July 1, 2005. This document is intended as a brief overview of those changes, and a comprehensive guide to the responsibilities of a trial judge in dealing with DNA testing and sex offenders. In addition to a discussion of the substance of both existing and new law, a “Judge’s Reference Chart” is included for sentencing sex offenders. This chart details the base sentence for each sex offense, as well as the applicable repeat-offense sentence enhancements and collateral restrictions for defendants convicted of these crimes. A three-page, general-purpose “Judge’s Sentencing Checklist” is included for reference in sentencing all offenders, regardless of type of crime.

The Act includes a severability clause: if any portion of H.F. 619 is found unconstitutional, other provisions of the Act are not affected.¹ The Act is also expressly exempted from the unfunded-mandate prohibition of Iowa Code § 25B.2(3). Local governmental units must fulfill their duties under the Act regardless of whether the Legislature provides funding to do so.²

¹ H.F. 619, § 53.

² Id. § 54.

Part I—DNA Profiling

H.F. 619 adds a new chapter to the Iowa Code.³ Chapter 81 establishes a DNA database and data bank, to be administered by the Division of Criminal Investigation. The database/data bank (hereinafter the “database”) serves several purposes: preservation of evidence; DNA protocol development and quality control; “establishment of a population statistics database”; identifying missing persons; and tracking offenders. As to identifying missing persons, the Act allows the database to store DNA samples from relatives of missing persons.

A. Privacy Issues

DNA databases present numerous privacy concerns. To deter unethical behavior by those with access to the database, H.F. 619 imposes criminal liability for unauthorized disclosure of DNA records or tampering with lab equipment. Unauthorized use or disclosure of DNA records is an aggravated misdemeanor.⁴ Tampering with DNA samples or lab tools is a class D felony.⁵

Liability for collection or analysis of a DNA sample is a different matter. The state retains sovereign immunity under the discretionary-function exception to the Iowa Tort Claims Act for “any claim arising from or related to the collection of a DNA sample . . . or a DNA profiling procedure performed by the division of criminal investigation.”⁶ H.F. 619 also immunizes from civil or criminal liability the collection of DNA samples, as long as it’s done (a) in good faith and (b) either in a medically acceptable manner or in accordance with Department of Public Safety administrative rules.⁷

☆Judge’s Note: Detention, arrest, or conviction based on a DNA match is not invalid even if the sample or profile was obtained or put in the database by mistake or error.⁸

³ H.F. 619, §§ 1–19.

⁴ Id. § 6 (to be codified at Iowa Code § 81.6(1)).

⁵ Id. § 6 (to be codified at Iowa Code § 81.6(2)).

⁶ Id. § 13 (to be codified at Iowa Code § 669.14(15)).

⁷ Id. § 5 (to be codified at Iowa Code § 81.5).

⁸ Id. § 7 (to be codified at Iowa Code § 81.7).

B. Who Has to Submit a DNA Sample?

While there are certain provisions for voluntary submission of DNA samples to the data bank,⁹ what matters most for our purposes is that certain people are required to submit DNA samples for profiling. Those persons are:¹⁰

- all felons (including deferred judgment, judgment, or conviction);
- chapter 229A “sexually violent predators,” prior to discharge or placement in a transitional release program;
- people required to register as sex offenders
- those found not guilty by reason of insanity of a qualifying offense (i.e., felony, RSO crime, or “sexually violent predator” offense), as part of their treatment program;
- juveniles found delinquent of a qualifying offense; and
- probationers, who must immediately report to the district department of correctional services for a determination whether they’ve been convicted of a qualifying offense.

The court must order a DNA sample from the above individuals as part of their sentencing or commitment. The court may order a DNA sample from any other offender “if appropriate.” In making this assessment, the court is to take into account the DNA test’s deterrent effect, the defendant’s likelihood of recidivism, and “the seriousness of the offense.”¹¹

The DNA-sample requirement is partially retroactive: people in “the custody, control, or jurisdiction of a supervising agency” on June 14, 2005, who would have been required to submit a DNA sample are required to do so prior to release from custody.¹² The parole board can also condition parole or work release on submission of a DNA sample if one hasn’t already been submitted under chapter 81.¹³

Offenders who are required to submit a DNA sample must also submit a fingerprint record for verification of identification.¹⁴ Refusal to submit a required DNA sample is punishable by chapter 665 contempt proceedings.¹⁵

⁹ Id. § 3 (to be codified at Iowa Code 81.3(3)).

¹⁰ Id. § 2 (to be codified at Iowa Code § 81.2).

¹¹ Id. § 14 (to be codified at Iowa Code § 901.5(8A)(b)).

¹² Id. § 18.

¹³ Id. § 15 (to be codified at Iowa Code § 906.4, unnum. para. 3).

¹⁴ Id. § 3 (to be codified at Iowa Code § 81.3(4)).

¹⁵ Id. § 4 (to be codified at Iowa Code § 81.4(3)).

C. Post-conviction Motions for DNA Profiling – Iowa Code § 81.10¹⁶

A defendant convicted of a felony who hasn't had to submit a DNA sample before may make a post-conviction motion to the court to order DNA testing on the evidence in his case. The motion must be filed in the county of conviction, and must state the following:

- The crimes for which the defendant was convicted in this case;
- The facts of the underlying case, as found at trial or admitted in a guilty plea;
- Whether any of the charges include sexual abuse or sexual assault, and if so,
 - whether a sexual assault examination was done and
 - whether resulting evidence was preserved, if known;
- Whether identity was at issue or contested by the defendant;
- Whether alibi was a defense, and if so,
 - whether corroborating testimony was offered, and from whom;
- Whether eyewitness testimony was offered, and from whom;
- Whether police or prosecutor misconduct was raised in the past or by this motion;
- Inculpatory evidence admitted into evidence at trial or admitted by guilty plea;
- Whether biological testing (blood tests, etc.) was done previously in this case, by whom, and what result;
- What biological evidence exists, and, if known, what agency or lab has possession of it;
- Why DNA analysis is material to the issue in this case, and not just cumulative or impeaching of the other evidence;
- Why DNA evidence would have changed the outcome of trial or invalidated a guilty plea if DNA profiling had been done.

The motion must be served by certified mail on the county attorney and the agency or lab in possession of the DNA evidence. The county attorney has 60 days to file an answer. The court may order a hearing on the motion.

The defendant is entitled to counsel for this motion, and the court must appoint counsel if it finds that the defendant is indigent.

The results of any DNA profiling of the defendant or any other biological testing done by the state or the defendant must be disclosed in the motion or answer. If biological testing was previously done on the evidence by either party, the court may order disclosure of the results of that testing, including lab reports, notes, and underlying data, to the court and the parties.

The court shall grant the motion if all of the following apply:

- The evidence is available and in a condition that will permit DNA testing;
- Chain of custody is established;
- Identity of the person who committed the crime was a significant issue in the case;

¹⁶ Id. § 10.

- The evidence is material, not just cumulative or impeaching;
- DNA testing would raise a reasonable probability that the defendant wouldn't have been convicted if DNA profiling had been available and conducted prior to conviction.

If the court grants the motion and orders DNA testing, the testing has to conform to "the guidelines generally accepted by the scientific community." If the state requests it, the defendant has to provide a DNA sample, which can be included in the state's DNA data bank.

The results of court-ordered testing must be reported to the parties and the court. Results may be reported to the parole board, department of corrections, and section 692.1 criminal and juvenile justice agencies, for use in investigation, prosecution, and requests for parole, pardon, reprieve, and commutation.

If the court decides, after ordering the DNA testing pursuant to the defendant's motion, that the results conclusively indicate that the defendant's DNA and the DNA evidence match, the defendant is responsible for all costs related to the motion, including testing and appointed counsel.

Part II—Registered Sex Offenders

H.F. 619 also modifies various sections of the Iowa Code relating to registered sex offenders (RSOs), creating new crimes and imposing additional restrictions on RSOs, as well as opening up the range of people entitled to information about RSOs.

A. Registration Rules

Iowa Code § 692A.2(1) requires people who are convicted of the following crimes to register as sex offenders:

- “Criminal offense against a minor” (Iowa Code § 692A.1(5))
 - Kidnapping (first, second, and third degree)
 - There is a parental exception for third-degree kidnapping.
 - False imprisonment
 - There is a parental exception.
 - ☆ Solicitation to engage in an illegal sex act
 - ☆ Use of a minor in a sex performance¹⁷
 - ☆ Solicitation to practice prostitution¹⁸
 - Incest
 - Dissemination/exhibition of obscenity to a minor
 - Admitting minors to premises exhibiting obscenity
 - Stalking a minor
 - The factfinder must find by clear and convincing evidence that the stalking was sexually motivated for the registration requirement to apply.
 - Sexual exploitation in violation of § 728.12:
 - enticing a minor to make child pornography
 - knowing promotion of child pornography
 - possession of child pornography
 - Enticing away a minor in violation of § 710.10(1) (intent to commit sexual abuse/exploitation on a victim under 13 + enticing of a victim who is actually or reasonably believed to be under 13)
 - ☆ Any indictable offense involving sexual conduct directed at a minor
 - ☆ Any indictable offense against a minor involving sexual contact with the minor
 - Attempt of any of these crimes
 - Any of the above if committed in another state
- “Aggravated offense” (victim’s age is generally irrelevant) (Iowa Code § 692A.1(1))
 - Sexual abuse (first, second, and third degree)

¹⁷ Possibly a reference to Iowa Code § 728.5.

¹⁸ Either § 705.1 solicitation or § 725.3(2) pandering involving a minor would probably qualify.

- Lascivious acts with a child in violation of § 709.8(1) (pubic/genital fondling of a child)
- Assault with intent to commit sexual abuse
- First degree burglary in violation of § 713.3(1)(d) (burglary + sexual abuse)
- Murder involving sexual abuse
- Criminal HIV transmission
- “Sexually violent offense” (victim’s age is generally irrelevant) (Iowa Code § 692A.1(9))
 - Sexual abuse as defined in § 709.1
 - Assault with intent to commit sexual abuse
 - Sexual misconduct with offenders
 - Murder, attempted murder, kidnapping, burglary, or manslaughter if sexual abuse/attempted sexual abuse is involved
 - Any of the above if committed in another state
- “Other relevant offense” (victim’s age is generally irrelevant) (Iowa Code § 692A.1(7))
 - Phone dissemination of obscenity to minors
 - Rental/sale of hard-core pornography
 - Indecent exposure
 - Incest against a § 235B.2 dependent adult
- “Sexual exploitation” (Iowa Code § 692A.1(10))
 - Exploitation by counselor, therapist, or school employee in violation of section 709.15
- “Sexually violent predators” as defined in 42 U.S.C. § 14071(a)(3)(B)–(E) (Iowa Code § 692A.1(11))
- The offender is required by another state to register on that state’s registry (Iowa Code § 692A.2(1))

The definitions of many of these crimes in section 692A.1 cite to specific Code sections. I have included those crimes in the sentencing chart accompanying this memo. The crimes that do not clearly refer to sections of the Code are denoted above with a star (★), and it is presumably left up to the charging instrument or the trial judge to apply to the facts of the case.¹⁹

“Conviction” for purposes of the sex offender registry is defined very broadly to include juveniles with sealed records and those who have been acquitted by reason of insanity of a qualifying offense. However, it does not include convictions that have been set aside or reversed

¹⁹ This probably presents no problems under Apprendi v. New Jersey, 530 U.S. 466 (2000), because sex offender registries are not “punishment,” but civil regulatory measures. See Smith v. Doe, 538 U.S. 84 (2003) (holding that retroactive application of sex offender registry requirements does not violate the Ex Post Facto Clause because they are regulatory, not punitive).

on appeal.²⁰ Also, if a person is convicted of more than one registry-qualifying offense in a single prosecution, those offenses only count as one conviction for purposes of the registry.²¹

There are special registration rules pertaining to juvenile sex offenders. Juveniles adjudicated delinquent in juvenile court of a “criminal offense against a minor,” “sexual exploitation,” a “sexually violent offense,” or an “other relevant offense” have to register “unless the juvenile court finds that the person should not be required to register under” chapter 692A.²² Although this standard appears vague, the Iowa Supreme Court has stated that the judge’s discretion in this case is the same level of discretion the judge has “throughout the juvenile code in the dispositional alternatives available to the court when choices have to be made between more and less onerous alternatives.”²³ From the structure of this section, it appears that the juvenile judge has no discretion if the crime at issue is a chapter 692A “aggravated offense”: the juvenile must be ordered to register as a sex offender. If the juvenile is ordered to register, “but the court later modifies the order regarding the requirement to register,” the court must notify the Department of Public Safety “immediately.”²⁴

Defendants convicted of a registry-qualifying crime do not have to register while they are “incarcerated, in foster care, or in a residential treatment program.”²⁵ The duty to register only begins upon release.

When the registration requirement takes effect, the offender must be informed of his duties as an RSO. If the offender is being released “from foster care or residential treatment or conviction without incarceration²⁶,” the court must impart this information.²⁷ If the offender is being “released from confinement . . . or . . . is convicted but not incarcerated,” that responsibility falls to the sheriff, warden, or superintendent having jurisdiction over the offender.²⁸ The informing official must do the following prior to release or sentencing:²⁹

²⁰ Iowa Code § 692A.1(3).

²¹ Id. § 692.2(4).

²² Id. § 692A.2(4).

²³ In the Interest of S.M.M., 558 N.W.2d 405, 406–07 (Iowa 1997).

²⁴ Iowa Code § 692A.2(4).

²⁵ Id. § 692A.2(4).

²⁶ Presumably this means “released from probation.”

²⁷ Iowa Code § 692A.5(1). Judge’s Note: Iowa Code § 692A.5(4) allows the court to “order an appropriate law enforcement agency or the county attorney to assist the court in performing [these] requirements.”

²⁸ Id. § 692A.5(1).

- Obtain the offender's fingerprints, Social Security number, and a current photo if they have not already been obtained in connection with the present offense;
 - If the offender is a chapter 229A sexually violent predator, the information gathered by the official must also "include, but not be limited to, other identifying factors, anticipated future places of residence, offense history, and documentation of any treatment" for mental illness.
- Inform the offender of the duty to register;
- Inform the offender that he must update his address with the sheriff of his new residence within five days of moving;
- Inform the offender of the duty to update his address with the sheriff of his old residence within five days if he moves out of Iowa, and the duty to register in his new state if required by that state;
- Require the offender to read and sign a statement that he has been informed of these duties;
- Inform an offender who is employed or a full-time student in a state other than the state of his residence of the duty to register with the sheriff of the place where the offender is employed or going to school ;
- Inform an offender who is employed or a full-time student in a county other than the county of his residence of the duty to register with the sheriff of the county where he is employed or going to school within five days;
 - These offenders must also be instructed to notify the sheriff of the employment/school county of any changes in employment or educational status within five days of the change.
- Inform the offender of the 2,000-foot residency restriction, if applicable;
- Inform the offender that he must submit to an annual photograph taken by the sheriff of his county of residence.³⁰

The responsible official must ensure that the offender fills out the "initial registration forms" and forward the forms to the Department of Public Safety "within three working days of completion of the registration."³¹ The responsible official must also forward a copy of the initial registration forms to the county in which the offender will be living within three days.³²

Refusal to register prohibits the offender from obtaining "probation, parole, work release, or any other form of release after conviction."³³ If the offender refuses to register, the corrections official in charge of the offender must inform a prosecuting attorney in the county of the offender's conviction or, if different, the offender's residence. The prosecuting attorney is then required to bring a contempt action against the offender. If the offender still refuses to register,

²⁹ Id.

³⁰ H.F. 619, § 25 (to be codified at Iowa Code § 692A.5(1)(i)).

³¹ Iowa Code § 692A.5(2), unnum. para. 1.

³² Id. § 692A.5(3).

³³ Id. § 692A.5(2), unnum. para. 1.

the court must hold him in contempt and may jail him “until the offender complies with the registration requirement.”³⁴

First-offense RSOs generally must register for ten years following release from custody.³⁵ Those convicted of an “aggravated offense” or those with more than one registry-qualifying offense have to register for life,³⁶ as do sexually violent predators.³⁷

People convicted of RSO-qualifying sex offenses whose victims were under 18 are also prohibited from “resid[ing] within two thousand feet of the real property comprising”³⁸ a school or child care facility.³⁹ These residency restrictions are independent of the registry requirement, and, unlike most first-time registry offenses, are permanent. H.F. 619 clarifies the definition of “residence.” The term now expressly includes shelters and group homes in the universe of “the place where a person sleeps, which may include more than one location, and may be mobile or transitory.”⁴⁰ This residency restriction contains a two-pronged grandfather clause: it does not apply to sex offenders’ residences established prior to July 1, 2002, or to schools or child care facilities established after July 1, 2002.⁴¹ “Restricted” persons were thus allowed to stay where they were already living on July 1, 2002, and they cannot be forced out of their homes by a new

³⁴ Id. § 692A.5(2), unnum. para. 2.

³⁵ Id. § 692A.2(1).

³⁶ Id. § 692A.2(3).

³⁷ Id. § 692A.2(5).

³⁸ The Iowa Supreme Court has not given an authoritative interpretation of the starting point of the buffer zone. There has been some public debate over whether the 2,000 feet should be measured from the front door of the building, the building itself, or some other point. “Real property comprising” a school or day care could also reasonably be interpreted to mean all of the real property on which a school or day care sits, and that the restricted zone should be measured from the property line. Such a reading is consistent with the text of the statute and would provide a readily ascertainable starting point for measurement. However, it would also create perverse incentives for school districts and day-care operators to acquire as much land as possible in order to create an even larger buffer zone around the building itself. This issue will have to be either addressed by the Legislature or settled by the courts when county attorneys begin prosecuting RSOs for violating the restriction.

³⁹ Id. § 692A.2A. The validity of this bar has been extensively litigated. Both the Iowa Supreme Court and the Eighth Circuit Court of Appeals have upheld its constitutionality. See Doe v. Miller, 405 F.3d 700 (8th Cir. Apr. 29, 2005), reh’g en banc denied, June 30, 2005, motion to stay mandate denied, 418 F.3d 950 (8th Cir. Aug. 8, 2005), petition for cert. filed (Sept. 29, 2005); State v. Seering, 701 N.W.2d 655 (Iowa July 29, 2005).

⁴⁰ H.F. 619, § 21 (to be codified at Iowa Code § 692A.2A(1)).

⁴¹ Iowa Code § 692A.2A(4)(c).

school or day care set up after that date. Violation of the 2,000 foot restriction is an aggravated misdemeanor.⁴²

RSOs must update their addresses at least annually.⁴³ H.F. 619 § 23 also requires them to submit to a photo taken by the county sheriff at least once a year.⁴⁴ (County sheriffs also have the authority to require photos more frequently of the RSOs living in their jurisdictions.)⁴⁵ Violation of these address and photo requirements automatically earns the RSO another 10-year registration period.⁴⁶ This additional period is tacked on to the end of the first registration period or any applicable chapter 903B “special sentence” (discussed in Part II above), whichever is longer.⁴⁷

The sex offender registry is intended, in part, to make Iowans aware of who their neighbors are. To further this purpose, H.F. 619 now allows members of the public to request information on a specific sex offender by phone or in person, as well as in writing.⁴⁸ (Previously, the request had to be in writing.) This information must be provided to the requester free of charge.⁴⁹

B. Monitoring Rules

H.F. 619 establishes new rules for monitoring RSOs as well. RSOs on probation, parole, work release, special sentence, or other conditional release can be subjected to supervision by electronic monitoring. If the offense was a “criminal offense against a minor,” “aggravated offense,” “sexually violent offense,” or “other relevant offense” (as defined in section 692A.1), they must be electronically monitored in addition to any other conditions of release.⁵⁰ By process of elimination, RSOs convicted of “sexual exploitation” or who have been deemed “sexually violent predators” are exempt from mandatory electronic monitoring on conditional release.⁵¹

⁴² Id. § 692A.2A(3).

⁴³ Id. § 692A.4(1).

⁴⁴ H.F. 619, § 23 (to be codified at Iowa Code § 692A.4(3)).

⁴⁵ Id.

⁴⁶ Id. § 22 (to be codified at Iowa Code § 692A.2(2A)).

⁴⁷ Id.

⁴⁸ Id. § 26 (to be codified at Iowa Code § 692A.13(3)).

⁴⁹ Id.

⁵⁰ Id. § 24 (to be codified at Iowa Code § 692A.4A).

⁵¹ Id.

Also, when an RSO “moves into a school district or moves within a school district,” the sheriff has to provide “relevant information”⁵² to the public schools in that district and the private schools “near the person’s residence.”⁵³ Since every place in Iowa is in a school district, this really means “when an RSO moves.”

H.F. 619 imposes restrictions on those cohabiting with RSOs as well. A new subsection has been added to Iowa Code § 726.6, which defines the crime of child endangerment. New subsection (1)(h) provides that cohabiting with an RSO after finding out that the person is an RSO or is required to register as an RSO constitutes child endangerment.⁵⁴ This provision does not apply to a parent, guardian, or custodian of a minor RSO.⁵⁵ Also, it provides a spousal exemption: the RSO’s spouse does not have to take the kids and move out upon learning of the RSO’s status.⁵⁶ Section 726.6(1)(h) child endangerment has been added to the relevant Code sections defining “child abuse” for purposes of child-abuse reporting⁵⁷ and the child abuse information registry.^{58, 59}

⁵² See Iowa Code § 692A.13(5); H.F. 619, § 29 (to be codified at Iowa Code § 692A.13(5) (adding “the results of any risk assessment” to the definition of “relevant information”).

⁵³ H.F. 619, § 28 (to be codified at Iowa Code § 692A.13(2A)).

⁵⁴ Id. § 31 (to be codified at Iowa Code § 726.6(1)(h)).

⁵⁵ Id.

⁵⁶ Id. These specific statutory exemptions might not avoid a problem that recently arose in Pennsylvania. A woman married to, but not cohabiting with, a sex offender who was convicted in 1983 of rape and sodomy involving two teenage girls went to the hospital to have a baby. Within 24 hours of the boy’s birth, county child-welfare officials, who had been “monitoring” her pregnancy, obtained an emergency court order to immediately remove the child from her custody, on the grounds that her husband’s status as a sex offender presented a danger to the child. (The hospital refused.) As of the date of this memo, the parents are due in court to contest the order. See Officials Try to Seize Sex Offender’s Baby, CNN.com, Oct. 21, 2005, <http://www.cnn.com/2005/LAW/10/2/sexoffender.custody.ap/index.html> (last visited Oct. 21, 2005); Mark Scolfaro, Sex Offender’s Wife in Custody Fight, Wash. Post, Oct. 11, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/11/AR2005101100180.html> (last visited Oct. 21, 2005). Iowa’s child-endangerment and custody statutes might still permit this result. See Iowa Code § 726.6(1)(a) (prohibiting “knowingly act[ing] in a manner that creates a substantial risk to a child or minor’s physical, mental, or emotional safety”); see also id. §§ 232.78–.79, 232.82–.83, 232.87–.104, 232.109–.120 (detailing procedures for ex parte temporary-custody orders, CINA proceedings, and termination of parental rights proceedings).

⁵⁷ Iowa Code §§ 232.67–.77.

⁵⁸ Id. §§ 235A.12–.24.

⁵⁹ H.F. 619, § 20 (to be codified at Iowa Code § 232.68).

C. Miscellaneous

Inmates subject to a category A sentence⁶⁰ and who are required to participate in sex offender treatment are not eligible for sentence reduction unless they complete a program established by the director of the Department of Corrections.⁶¹

Section 692A.13(5) has been amended by H.F. 619 to include the following language: “For purposes of inclusion in the sex offender registry’s web page or dissemination to the general public, a conviction for incest [against a minor] shall be disclosed as either” third degree sexual abuse or lascivious acts with a child.⁶² This creates a potential inconsistency in the case of consensual incest where the “victim” is 16 or 17. Such a case would not qualify at all as “lascivious acts with a child,”⁶³ and could conceivably not fit any of the criteria of third degree sexual abuse, either. In this situation, the RSO would be presented to the public as having been convicted of a substantively different crime than the one for which he or she actually had been convicted.

Section 903B.1 authorizes the court or parole board to require “hormonal intervention therapy” (commonly known as “chemical castration”) as a condition of release for defendants convicted of a “serious sex crime” against a victim aged 12 or under.⁶⁴ This therapy can be ordered even for first-time offenders, and must be ordered for second or successive “serious sex crimes” “unless, after an appropriate assessment, the court or board determines that the treatment would not be effective.”⁶⁵ The crimes for which this punishment is available are detailed in the accompanying chart. “Hormone intervention therapy” involves injections of medroxyprogesterone acetate (commercially available as Depo-Provera) or “any other pharmaceutical agent.” The offender is, in essence, put on birth control in order to lower his sex drive. The offender does have the option to avoid hormone therapy by “voluntarily undergo[ing]

⁶⁰ For purposes of chapter 903A sentence reduction.

⁶¹ Iowa Code § 903A.2(1)(a).

⁶² H.F. 619, § 29 (to be codified at Iowa Code § 692A.13(5)).

⁶³ See Iowa Code § 702.5 (defining “child” as “any person under the age of fourteen years”).

⁶⁴ Id. § 903B.1(1).

⁶⁵ Id. The required assessment for female offenders would be relatively easy, since this treatment would be generally ineffective on them. See Pfizer, Depo-Provera 12, available at http://www.pfizer.com/pfizer/download/uspi_depo_provera_contraceptive.pdf (last visited Sept. 29, 2005) (noting that only 1%–5% of female patients in the largest clinical trial of the drug reported “decreased libido or anorgasmia”).

a permanent surgical alternative approved by the court or the board.”⁶⁶ H.F. 619 now provides qualified immunity (from “civil damages,” at least) to “[a] person who administers [the drug] . . . pursuant to this chapter.”⁶⁷

⁶⁶ Iowa Code § 903B.1(1).

⁶⁷ H.F. 619, § 33 (to be codified at Iowa Code § 903B.1(7)).

Part III—Enhanced Sex-Offender Penalties

While not necessarily penalties, two provisions of H.F. 619 should be noted here. First, the age of criminal responsibility for lascivious acts with a child⁶⁸ has been reduced to 16 from 18.⁶⁹

Second, the statute of limitations for first-, second-, or third-degree sexual abuse⁷⁰ has been expanded to take account of the new DNA registry. The statute of limitations is now either ten years after commission of the offense (tolled until age 18 for minor victims) or three years after identification of the perpetrator through use of a DNA profile, whichever is later.⁷¹

A. Repeat Offenders

As detailed in the accompanying chart, repeat offenders are subjected to a multitude of enhanced penalties, depending on the nature of the offense. It will be evident from the chart that many of these enhanced penalties may overlap in certain cases.

First, several offenses contain provisions increasing the degree of the offense for subsequent commissions of that specific offense. For example, a first offense for possession of child pornography is an aggravated misdemeanor. Subsequent violations of that law, however, are class D felonies. Additional “basic” repeat-offender sentences are detailed in the accompanying chart.

Second, chapter 901A imposes special sentence enhancements on “sexually predatory offenses.” Section 901A.1 defines a “sexually predatory offense” as any serious or aggravated misdemeanor, or felony, constituting:

- Any chapter 709 violation;
- Sexual exploitation of a minor in violation of § 728.12(1) (enticing a minor to make child pornography);
- Enticing a minor in violation of § 710.10(1);
- Pandering involving a minor in violation of § 725.3(2);

⁶⁸ Iowa Code § 709.8.

⁶⁹ H.F. 619, § 35 (to be codified at Iowa Code § 709.8).

⁷⁰ Iowa Code § 802.2.

⁷¹ H.F. 619, § 36 (to be codified at Iowa Code § 802.2).

- “Any offense involving an attempt to commit” an SPO⁷²;
- Any of these committed in another jurisdiction.

A repeat conviction of any of these offenses invokes a complex scheme of enhanced sentencing. For purposes of chapter 901A enhanced sentencing, “conviction” includes deferred judgments or suspended sentences, or adjudications of delinquency, regardless of when it was entered.⁷³ If the defendant is convicted of a misdemeanor SPO and has only one prior SPO conviction, he is to be sentenced to double the ordinary maximum sentence.⁷⁴ If the misdemeanor-SPO defendant has two or more prior SPO convictions, he is to be sentenced to ten years’ confinement.⁷⁵ If the defendant is convicted of a felony SPO and has only one prior SPO conviction (felony or misdemeanor), he is to be sentenced to double the ordinary maximum sentence or 25 years, whichever is greater.⁷⁶ If the felony-SPO defendant has previously been sentenced under § 901A.2(3), he is to be sentenced as if the crime were a class A felony: i.e., life in prison. “In order for a person to be sentenced under this subsection, the prosecuting attorney shall allege and prove that this section is applicable to the person.”⁷⁷ The defendant is also to be sentenced to life in prison if: (a) the defendant has been presently convicted of a repeat offense of second-degree sexual abuse of a victim under age 12⁷⁸; or (b) the defendant is a chapter 229A

⁷² The Iowa Supreme Court has held that this includes a conviction of false imprisonment where the jury found by special interrogatory that the defendant had committed the crime with the intent to commit sexual abuse. *State v. Harrington*, 608 N.W.2d 440, 440–41 (Iowa 2000).

⁷³ *Iowa Code* § 901A.1(2).

⁷⁴ *Id.* § 901A.2(1).

⁷⁵ *Id.* § 901A.2(2).

⁷⁶ *Id.* § 901A.2(3). Functionally, this will almost always work out to the 25-year term. Only three offenses are class B felonies subject to a 50-year enhanced term: second-degree sexual abuse in violation of Iowa Code § 709.3(1) or (3), and burglary involving chapter 709 sexual abuse (Iowa Code § 713.3(d)). All other offenses subject to the double-or-25 enhancement rule are class C or D felonies.

⁷⁷ *Id.* § 901A.2(4). This requirement is probably superfluous in light of Iowa Rules of Criminal Procedure 2.6(5) and 2.19(9), which effectively extend the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to prior convictions. The Iowa Rules may provide more protection to defendants than does *Apprendi*. Rule 2.6(5) requires the prosecutor to allege the defendant’s prior convictions in the initial indictment, but to submit an amended indictment for the jury, with the prior-conviction allegations removed to prevent prejudice to the defendant. Upon conviction and before sentencing, if the defendant does not admit the alleged prior convictions in open court, the judge must order a new jury for a separate trial on the fact of the alleged prior convictions. *Iowa R. Crim. P.* 2.19(9).

⁷⁸ *Iowa Code* § 709.3(2).

sexually violent predator on release and has been presently convicted of either a chapter 901A sexually predatory offense or a chapter 229A sexually violent offense.⁷⁹ Defendants subject to a chapter 901A enhancement are not eligible for deferred or suspended judgment or sentence.⁸⁰ Upon release by the parole board, they must also serve up to a 2-year period of parole or work release.⁸¹

H.F. 619 reclassifies the most serious acts of sexual abuse: a second or further offense of second- or third-degree sexual abuse⁸² or genital/pubec-fondling lascivious acts with a child,⁸³ or any combination thereof, is a class A felony.⁸⁴ The court must count every conviction or deferred judgment entered prior to the new offense, regardless of the effective date of H.F. 619.⁸⁵ Convictions or deferred-judgment equivalents from other jurisdictions must also be counted, and the court must take judicial notice of other states' substantially equivalent statutes.⁸⁶

B. "Special Sentences"

This is the major change H.F. 619 works to the sentencing of sex offenders. Prior to the Act, Iowa Code sections 709.8 and 903B.1(3) imposed special conditions on the release of people convicted of certain sex offenses. The Act eliminates those provisions and establishes a relatively comprehensive scheme of "special sentences" for a greatly expanded range of offenses. The attached chart lays out the offenses to which these special sentences apply.

There are two classes of special sentence, depending on the severity of the offense. Both operate like a term of parole to be served after the offender serves his sentence for the underlying offense. The "special sentence" is mandatory, and must be imposed by the court at the section 901.5 sentencing proceeding.⁸⁷

Both classes of "special sentence" follow the same basic rules. The "special sentence" begins when the sentence for the underlying offense is completed. Persons convicted of class-C

⁷⁹ Iowa Code §§ 901A.2(5), 901A.2(6).

⁸⁰ Id. § 901A.2(7).

⁸¹ Id. § 901A.2(8).

⁸² Id. §§ 709.2-4.

⁸³ Id. § 709.8(1)-(2).

⁸⁴ H.F. 619, § 38 (to be codified at Iowa Code § 902.15).

⁸⁵ Id. § 38 (to be codified at Iowa Code § 902.15(2)).

⁸⁶ Id.

⁸⁷ Id. § 37 (to be codified at Iowa Code § 901.5(13)).

felony or greater chapter 709 violations or of trying to get a minor to make child pornography⁸⁸ are subject to a “special sentence” of life, with a possibility of parole.⁸⁹ A lesser “special sentence” applies to those convicted of: any misdemeanor or class-D felony chapter 709 violations; incest; or possession or knowing promotion of child pornography. These offenders must be given a special sentence of 10 years, with a possibility of parole.⁹⁰

The offender begins the special sentence as if on parole. This conditional release can be revoked by an administrative parole judge.⁹¹ A first revocation of release earns the offender up to 2 years in prison, and each further revocation gets up to 5 years in prison.⁹² The special sentence is a category A sentence for purposes of calculating earned time under chapter 903A.⁹³ A person may be paroled from a special sentence in the same manner as from any other sentence.⁹⁴

⁸⁸ Iowa Code § 728.12.

⁸⁹ H.F. 619, § 39 (to be codified at Iowa Code § 903B.0A).

⁹⁰ Id. § 40 (to be codified at Iowa Code § 903B.0B).

⁹¹ Id. § 43 (to be codified at Iowa Code § 908.5(2)).

⁹² Id. § 39 (to be codified at Iowa Code § 903B.0A); id. § 40 (to be codified at Iowa Code § 903B.0B). The Legislature made especially clear that an offender under a special sentence was not to be imprisoned for the balance of the special sentence upon violation of the terms of his special-sentence release. “Upon the revocation of release, the person shall not serve the entire length of the special sentence imposed” Id. § 43 (to be codified at Iowa Code § 908.5(2)).

⁹³ Id. § 39 (to be codified at Iowa Code § 903B.0A); id. § 40 (to be codified at Iowa Code § 903B.0B).

⁹⁴ Id. § 42 (to be codified at Iowa Code § 906.15, unnum. para. 1).

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence"	Sex offender registry? ^{5,6}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
707.2 (murder 1 or attempt) + 709.1 sex abuse (actual or attempt)	A felony (forcible felony)	Life				Life	Y	Required	
707.3 (murder 2 or attempt) + 709.1 sex abuse (actual or attempt)	B felony (forcible felony)	25 years max				Life	Y	Required	
707.4 (voluntary manslaughter) + 709.1 sex abuse (actual or attempt)	C felony	10 years max				10 years; life if repeat	Y	Required	
707.5 (involuntary manslaughter) + 709.1 sex abuse (actual or attempt)	D felony	5 years max				10 years; life if repeat	Y	Required	
708.11(b)(3) (stalking a minor) – if found sexually motivated by clear & convincing evidence	D felony (forcible felony)	5 years max				10 years; life if repeat	Y	Required	
709.2 (sex abuse 1)	A felony (forcible felony)	Life			Life with possibility of parole	Life	Y	Required	Optional; required if repeat

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence" ^{5,6}	Sex offender registry? ^{5,6}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
709.3(1) & (3) (sex abuse 2)	B felony (forcible felony)	25 years max	50 years; sentence as class A felony if prior 901A.2(3) enhancement	Class A felony	Life with possibility of parole	Life	Y	Required	Optional; required if repeat
709.3(2) (sex abuse 2, victim under 12)	B felony (forcible felony)	25 years max	Life if repeat of this offense	Class A felony	Life with possibility of parole	Life	Y	Required	Optional; required if repeat
709.4 (sex abuse 3)	C felony (forcible felony – exceptions: D and V are married; or 709.4(2)(c)(4))	10 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement	Class A felony	Life with possibility of parole	Life	Y	Required	Optional; required if repeat
709.7 (detention in brothel)	C felony	10 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement		Life with possibility of parole				

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence"	Sex offender registry? ^{5,6}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
709.8(1) & (2) (lascivious acts w/child – genital/pubec fondling)	C felony (D felony prior to 7/1/05))	10 years max	25 years; treat as class A felony if prior 901A.2(3)	Class A felony	Life with possibility of parole	Life	Y	Required	Optional; required if repeat
709.8(3) & (4) (lascivious acts w/child – solicitation of a sex act; sodomasochism)	D felony	5 years max	25 years; sentence as class A felony if prior 901A.2(3)		10 years				Optional; required if repeat
709.9 (indecent exposure)	Serious misdemeanor	1 year max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years	10 years; life if repeat	Y	Required	
709.11 (assault w/intent, serious injury)	C felony (forcible felony)	10 years max	25 years; sentence as class A felony if prior 901A.2(3)		Life with possibility of parole	Life	Y	Required	Optional; required if repeat

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence"	Sex offender registry? ^{5,6}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
709.11 (assault w/intent, non-serious injury)	D felony (forcible felony)	5 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement		10 years	Life	Y	Required	Optional; required if repeat
709.11 (assault w/intent, no injury)	Serious misdemeanor	1 year max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years	Life	Y	Required	Optional; required if repeat
709.12 (indecent contact w/child)	Aggravated misdemeanor	2 years max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years				
709.14 (lascivious conduct w/minor)	Serious misdemeanor	1 year max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years				
709.15(2)(a) (sex exploitation by therapist/counselor - pattern or practice)	D felony	5 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement		10 years	10 years; life if repeat		Optional	Optional; required if repeat

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence" ^{5,6}	Sex offender registry? ^{5,6}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
709.15(2)(b) (therapist/counselor exploitation – any sex conduct w/emotionally dependent patient)	Aggravated misdemeanor	2 years max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years	10 years; life if repeat		Optional	Optional; required if repeat
709.15(2)(c) (therapist/counselor exploitation – any sex conduct w/recent patient)	Serious misdemeanor	1 year max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years	10 years; life if repeat	Y	Optional	Optional; required if repeat
709.15(3)(a) (school employee exploitation – pattern or practice)	D felony	5 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement		10 years	10 years; life if repeat	Y	Optional	Optional; required if repeat
709.15(3)(b) (school employee exploitation – any sex conduct)	Aggravated misdemeanor	2 years max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years	10 years; life if repeat	Y	Optional	Optional; required if repeat
709.16 (sex misconduct w/offenders)	Aggravated misdemeanor	2 years max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years	10 years; life if repeat	Y	Required	

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence" ^{5,6}	Sex offender registry ^{7,8,9}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
709.18 (corpse abuse)	D felony	5 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement		10 years				
709.21 (invasion of privacy)	Serious misdemeanor	1 year max	2 years for first repeat; 10 years if 2 or more SPO priors		10 years				
709C.1(1) (criminal HIV transmission)	B felony	25 years max				Life	Y	Required	
710.2 (kidnapping 1)	A felony (forcible felony)	Life				10 years (if V is minor)	Y	Required	
710.3 (kidnapping 2)	B felony (forcible felony)	25 years max				10 years (if V is minor)	Y	Required	
710.4 (kidnapping 3)	C felony (forcible felony)	10 years max				10 years (if V is minor and D isn't parent)	Y	Required	
710.5 (false imprisonment)	Serious misdemeanor	1 year max				10 years (if V is minor and D isn't parent)	Y	Required	

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence"	Sex offender registry? ⁵	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
710.10(1) (enticing a minor under 13)	C felony	10 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement			10 years; life if repeat	Y		
710.10(2) (enticing under 16)	D felony	5 years max							
710.10(3) (attempted enticing under 16)	Aggravated misdemeanor	2 years max							
713.3(d) (burglary + 709.1 sex abuse)	B felony	25 years max	50 years; sentence as class A felony if prior 901A.2(3) enhancement			Life	Y	Required	
725.3(2) (pandering involving minor)	D felony	5 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement			10 years; life if repeat	Y	Required	
726.2 (incest w/minor)	D felony	5 years max			10 years	10 years; life if repeat	Y	Required	

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence"	Sex offender registry? ^{5,6}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
726.2 (incest w/235B.2 dependent adult)	D felony	5 years max				10 years; life if repeat		Required	
728.2 (obscenity to minors)	Serious misdemeanor	1 year max				10 years; life if repeat	Y	Required	
728.3(1) (admitting 14 & over minors to obscenity)	Serious misdemeanor	1 year max				10 years; life if repeat	Y	Required	
728.3(2) (admitting child to obscenity exhibition)	Aggravated misdemeanor	2 years max				10 years; life if repeat	Y	Required	
728.4 (rental/sale of hard-core porn)	Aggravated misdemeanor	2 years max				10 years; life if repeat	Y	Required	
728.4 (repeat)	D felony	5 years max				10 years; life if repeat	Y	Required	
728.12(1) (enticing minor to make porn)	C felony	10 years max	25 years; sentence as class A felony if prior 901A.2(3) enhancement		Life with possibility of parole	10 years; life if repeat	Y	Required	Optional; required if repeat
728.12(2) (promoting child porn)	D felony	5 years max			10 years	10 years; life if repeat	Y	Required	Optional; required if repeat
728.12(3) (possession of child porn)	Aggravated misdemeanor	2 years max			10 years	10 years; life if repeat	Y	Required	

IOWA SEX OFFENDER SENTENCING: JUDGE'S REFERENCE CHART

Offense ¹	Type	Base sentence of confinement	§ 901A SPO ² repeat-offender enhanced sentence ³	§ 902.15 repeat-offender enhanced sentence ⁴	903B "special sentence"	Sex offender registry? ^{5,6}	Residency restriction? (only if V was <18)	Electronic monitoring?	Hormone therapy? (only if V was <12) ⁷
728.12(3) (repeat)	D felony	5 years max			10 years	10 years; life if repeat	Y	Required	
728.15 (phone dissemination of obscenity to minors)	Aggravated misdemeanor	2 years max				10 years; life if repeat	Y	Required	
728.15 (repeat)	D felony	5 years max				10 years; life if repeat	Y	Required	

Notes:

1. Within the "Offense" column, "repeat" means a second or subsequent conviction for that particular offense.
2. "SPO" means a "sexually predatory offense" as defined in § 901A.1.
3. Unless otherwise specified, with regard to the chapter 901A SPO enhancement, "repeat" means a second or subsequent conviction of a § 901A.1 SPO.
4. With regard to the § 902.15 enhancement, "repeat" means second or subsequent conviction of second or third degree sexual abuse or lascivious acts with a child involving pubic/genital fondling.
5. If this table does not specify a registry requirement for a particular offense, that offense may still qualify as a registry offense under one of the "catchall" categories listed in Iowa Code §§ 692A.1(5)(c) & (g). It is incumbent upon the sentencing judge to apply the facts of the case to the registry standards.
6. With regard to the sex offender registry requirement, "repeat" means a second or subsequent conviction of a registry offense, regardless of when committed. See Iowa Code § 692A.2(3).
7. With regard to hormone therapy, "repeat" means a second or subsequent conviction of a hormone-therapy-eligible offense.

JUDGE'S SENTENCING CHECKLIST

Prior to the § 901.5 sentencing proceeding, the court must, if applicable, inform a defendant convicted of a sex-offender-registry-qualifying offense of his duties as a registered sex offender pursuant to § 692A.5(1). These are detailed in What Every Trial Judge Should Know About H.F. 619, pages 9–10.

At the § 901.5 sentencing proceeding, the court may:

- Defer judgment and sentencing indefinitely if authorized by § 907.3;
- Pronounce judgment and impose a fine, if the defendant is not a § 902.8 habitual offender;
- Pronounce judgment and impose a fine, sentence of confinement, or both, and suspend the sentence in whole or in part under chapter 907;
- Pronounce judgment and impose a fine, sentence of confinement, or both;
- Defer the sentence and commit the defendant to the department of correctional services if authorized by § 907.3;
- Pronounce judgment, sentence the defendant to confinement, and reconsider the sentence under § 902.4 or § 903.2;
- Issue a no-contact order under § 901.5(7A);
- Order the defendant to complete substance-abuse treatment indicated by a substance-abuse evaluation;
- Order DNA profiling of a non-§ 81.2 offender “if appropriate”;
- If the defendant has been convicted of a chapter 124 offense, order denial of federal benefits pursuant to 21 U.S.C. § 862 or comparable state benefits (but the court must at least consider these sanctions);
- If the defendant is convicted of two or more offenses, order that the sentences be served consecutively;
- If the defendant is being sentenced for a first conviction under §§ 124.406,¹ 124.413,² or 902.7,³ reduce the defendant’s sentence if mitigating circumstances are stated specifically in the record;
 - Exception: If the § 124.413 offense involves a § 124.401(1)(a)⁴ or (b)⁵ amphetamine/methamphetamine offense, the court may only reduce the mandatory minimum sentence by a maximum of one-third, and only if the defendant pleads guilty. If the defendant has pleaded guilty and the prosecutor

¹ Distribution of controlled substances to minors.

² Mandatory minimum for manufacture, distribution, or possession with intent to manufacture or distribute, of controlled substances.

³ Use of a weapon in a forcible felony.

⁴ More than five kilograms of any substance containing a detectable amount of amphetamine or methamphetamine.

⁵ Between five grams and five kilograms of any substance containing a detectable amount of amphetamine or methamphetamine.

requests an additional reduction due to the defendant's cooperation in other drug prosecutions, the court may reduce the mandatory minimum sentence "up to one-half of the remaining mandatory minimum sentence."

- If the defendant is being sentenced for a first conviction under § 124.401D⁶ and pleads guilty, and if mitigating circumstances are stated specifically in the record, reduce the § 902.9(1) maximum sentence by no less than one third.
 - If the prosecutor requests an additional reduction due to the defendant's cooperation in other drug prosecutions, the court may reduce the sentence further.

At the § 901.5 sentencing proceeding, the court must:

- Inform the defendant of any applicable mandatory minimum sentence;
- Order DNA profiling if the defendant has been convicted of an offense listed in Iowa Code § 81.2;
- If the defendant has been convicted of an aggravated misdemeanor or felony, publicly announce:
 - The possibility of sentence reduction through earned time, work credits, and program credits;
 - The possibility of parole prior to discharge of the sentence;
 - If the defendant is subject to multiple sentences, whether they shall be served consecutively or concurrently;
- Order a 180-day revocation of the defendant's driver's license, to run consecutively with any existing suspensions or revocations, if the defendant has been convicted of:
 - A controlled-substance offense under §§ 124.401,⁷ 124.401A,⁸ 124.402,⁹ or 124.403¹⁰;
 - A drug or drug-related offense under § 126.3¹¹;
 - A controlled-substance tax offense under chapter 453B;
- Impose any applicable chapter 903B "special sentence";
- Include in the judgment entry the Code section and name of the offense under which the defendant is sentenced;
- Include in the judgment entry the number of days of time served under § 903A.5;
- If the defendant is sentenced to confinement for more than one year:
 - commit the defendant to the custody of the director of the Department of Corrections;
 - order arrangements for temporary custody of the defendant pending transfer;

⁶ Conspiracy to manufacture or deliver, or delivery of, amphetamine or methamphetamine to a minor.

⁷ Manufacture, delivery, or possession with intent to manufacture or distribute, of controlled substances.

⁸ Manufacture, delivery, or possession with intent to manufacture or distribute, of controlled substances within 1,000 feet of a school, park, public pool, public recreation center, or on a school bus.

⁹ Unauthorized distribution of controlled substances.

¹⁰ Unauthorized distribution of schedule I or II controlled substances, fraudulent records, and controlled-substance counterfeiting.

¹¹ The Iowa Drug, Device, and Cosmetic Act.

- order the county of prosecution to pay for temporary custody and transportation of the defendant until transfer to the state institution;
 - order that the defendant, during transport, be accompanied by a person of the same sex;
- If the defendant is being sentenced for escape under § 719.4 or for an offense committed while in a detention center or correctional facility, order that the sentence for that offense be served consecutively with the existing sentence.